

# In the Shadow of ISTEA

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**B**etween the idea and reality falls the shadow--T.S. Elliot

The passage of the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) seemed to present the urban areas of North Carolina with an historic opportunity to play a much greater role in the development of transportation plans and the funding of transportation projects. As the name of the Act implies, Congress intended that federal transportation policy would promote multi-modal planning for the nation's transportation system.

The most important changes in federal transportation policy included in ISTEA deal with the roles of metropolitan planning organizations in the development of transportation policies and how those policies are reflected through the funding of projects through transportation improvement programs. Metropolitan planning organizations and the local governments that comprise them argued that the transportation problems in urban areas required a flexible approach to problem solving. They insisted that, as with many other problems, those officials that were closest to the problem had the best understanding of what the local community wanted to do to solve the problem. ISTEA attempted to provide the largest urban areas with a far greater degree of local responsibility and authority to solve those transportation problems. Although ISTEA represented a fundamental change in federal transportation policy, the interpretation and implementation of ISTEA by the North Carolina Department of Transportation has limited its impact on the state's urban areas.

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## Institutional Background

In order to understand the problems in implementing ISTEA in North Carolina, it is important to understand the transportation policy and funding system that has evolved over the past 70 years. The state of North Carolina has a very strong presence in transportation issues. Unlike other states, where counties and townships have responsibility for local road construction and maintenance, North Carolina's State Department of Transportation is responsible for the vast majority of roads throughout the state. Although local governments play a role in constructing and maintaining local streets, by and large roadbuilding and maintenance is a state responsibility.

The structure for overseeing the implementation of state transportation policy is centered on the State Board of Transportation. The Governor appoints boardmembers who represent fourteen highway divisions within the state and nine at-large members. Legislative leaders appoint two of those Boardmembers. The Board of Transportation has responsibility for setting state transportation policy and allocating transportation funds. The funds available for transportation projects are made up of federal allocations and gas tax revenue collected by the state. While the use of state funds is governed by North Carolina legislative regulations, the federal monies the state receives are governed by federal regulations. In FY 1993, federal transportation funds available to North Carolina totaled approximately \$423 million.

In the late 1980s, the North Carolina legislature passed a multi-billion dollar Highway Trust Fund program, funded by an increase in the state gas tax, to construct Urban Loops and widen rural roads. These Urban Loops are specifically identified in the legislation. This legislation included a formula for distributing the Trust Fund to seven regions across the state. The formula allocates 25 percent based on an equal distribu-

tion, 25 percent on the percentage of intra-state road miles to complete within the region, and the remaining 50 percent is based on population. This formula is also used in the distribution of federal transportation funds.

In the early 1970s, the federal government established a metropolitan planning process related to the use of federal transportation funds. Areas with populations over 50,000 were designated as Metropolitan Areas and allowed to establish Metropolitan Planning Organizations (MPOs). These MPOs and the state were required by federal rule to adopt a "comprehensive, cooperative and continuing" planning process. Despite MPOs' role in the planning process, control over federal funds remained firmly under the control of the state. The only power the MPOs were granted was a negative veto; they could remove a project from the Transportation Improvement Program, but had no power to reallocate the funds associated with that project or direct that other funding be provided to any other project. The Transportation Improvement Program, covering a seven-year period, is the spending blueprint that guides all expenditures of federal transportation funds. No federal monies can be spent on a project that does not appear in that Program.

### **Transportation Improvement Programs**

The North Carolina Board of Transportation established a Transportation Improvement Process that required individual local governments to submit transportation "wish lists" on an annual basis. These lists ostensibly were then used by the Board of Transportation and NCDOT staff to allocate transportation funds. There were no objective criteria set out that provided insight into the allocation process and Board members had a great deal of flexibility in allocating transportation funds without any strict accountability.

This system, which concentrated power with the State Board of Transportation, led some MPOs to contend that there was in fact a grossly uneven playing field. Although North Carolina was somewhat unique, this tension between MPOs and State DOTs was widespread. The 1991 passage of ISTEA sought, in part, to correct deficiencies in the process. While ISTEA affects all facets of federal transportation policy, the two areas that represent the most dramatic changes involve federal funding categories and the roles that MPOs, particularly those with populations over 200,000, play in the development of transportation plans and the transportation improvement program.

### **MPO Responsibility**

Prior to the passage of ISTEA, MPOs argued that they should be given more responsibility for developing transportation plans for their areas and that transportation funding decisions should be tied to those plans.

They contended that local governments, as represented by the MPOs, were in a much better position to reflect local needs and express local preferences for alternative modes of transportation.

Congress responded to these arguments by incorporating into ISTEA provisions strengthening the role of MPOs. Urban areas must now prepare long range, comprehensive transportation plans which must integrate roadway, public transit, bicycle and pedestrian projects, and must be used as the basis for preparing the local Transportation Improvement Program. ISTEA includes a provision that the metropolitan planning process involve, at a minimum, fifteen explicit components, including: consistency with energy conservation, consistency with land use and development, congestion prevention, and methods to expand and enhance the use of public transit.

The greatest responsibility was given to urban areas with population over 200,000. These areas were designated in the ISTEA as Transportation Management Areas (TMAs). In North Carolina, the Charlotte, Raleigh, Fayetteville and Durham-Chapel Hill-Carrboro Urban Areas are TMAs. In addition to the other requirements, TMAs are required to develop Congestion Management Systems. These TMAs were also given broader responsibility for the development of the local Transportation Improvement Program and selection of projects. The development of TIPs was now a cooperative process between each MPO and the state. The state now required a realistic TIP, meaning that jurisdictions could no longer submit wish lists that were not fiscally feasible.

### **Federal Transportation Funding**

ISTEA completely revised the federal transportation funding program, which had provided separate categories for highway and transit projects. ISTEA modified these categories, providing funds for the National Highway System (NHS), Surface Transportation Program (STP) and Congestion Management Air Quality (CMAQ) programs. While NHS funds can only be used on highway facilities designated part of the national system, STP funds can be used for any transportation purpose, including public transit projects.

Within the STP, there is a provision that TMAs be given a direct allocation, to be spent at the discretion of the TMA on projects selected by the TMA. For FY 1992 and FY 1993, these direct funds totaled approximately \$30,226,000 for the four TMAs in North Carolina.

In addition, ISTEA stipulates that ten percent of the total amount of STP funds provided to the state be set aside under the Enhancement Program. This Enhancement Program, totaling approximately \$14 million for North Carolina in FY 1993, can be used for a variety of transportation related projects, ranging from historic preservation to scenic beautification to bicycle-pedestrian projects.



## Issues

The Durham-Chapel Hill-Carrboro Urban Area Transportation Advisory Committee (TAC) has engaged the NCDOT in continuing discussions over the implementation of ISTEA. The TAC has raised several concerns to NCDOT about the manner in which the preliminary guidelines for implementation were being interpreted. These disagreements with the state led to the urban area missing several deadlines for approving the TIP, requesting a meeting with representatives from the U.S. Department of Transportation, and testifying before a Congressional subcommittee about these concerns. The issues the Durham TAC has raised, many of which remain unresolved, should be of interest to all urban areas of the State, particularly the three other TMAs: Charlotte, Raleigh, and Fayetteville.

## TIP Development and Project Selection

The development of the Transportation Improvement Program and project selection are among the most contentious points between the TMAs and NCDOT. Under the system that guided North Carolina transportation spending, all decisions were made by the Board of Transportation. All related information concerning the financing of projects was held exclusively by the State Department of Transportation.

ISTEA assumes that the process for developing a TIP and selecting projects should occur generally in the following manner: the state provides the urban area with an estimate of anticipated federal revenue, by funding category, NHS, STP, CMAQ, etc. for a minimum of a

three-year period; the urban area and the state agree upon a list of projects to be included in the TIP--projects that could reasonably be undertaken given the general levels of anticipated funding; this local TIP is included in total in the state TIP; and the urban area selects projects for funding after prioritizing the projects in the TIP. This project selection responsibility would be the *sole* responsibility of the urban area, with the state providing advice.

The real process occurs in the following manner: the urban area develops a priority list of projects for submission to the state; the State Board of Transportation develops a draft state TIP *before* the urban area develops a local TIP; the draft state TIP is submitted to the urban area, with projects already selected for their approval; and the urban area must develop a local TIP that is completely consistent with the state TIP.

In trying to fulfill the federal requirement for developing a fiscally constrained TIP, the Durham Urban Area requested that the state provide the Urban Area with estimates of anticipated future funding. The state's response was that they could not provide the urban area with an estimate of funds because funding decisions are made on a division basis. The Durham Urban Area is split by three NCDOT divisions. The urban area has argued that, if the state division system is at odds with the federal requirements in the development of the TIP, the state system should be modified.

Both the state divisional organization and the state allocation formula, which uses that arrangement, have the potential to skew funding decisions. Urban areas,



*The Durham Urban Area would like more funds for bicycle and pedestrian projects.*

which are the focus of federal transportation policy, may not get their fair share of federal transportation funds. For example, Orange County is in Highway Division 7, which includes Greensboro. Even if the Orange County portion of the Durham Urban Area receives no funding because it is part of a larger area, the state could point to projects outside the urban area as proof that there has been a fair distribution of funds. Not surprisingly there has been no agreement between the state and the urban area over the differences in this process.

ISTEA is very clear that transportation funds should be allocated based on need and avoid predetermined formulas for distribution. If the state can successfully argue that a distribution formula is justified, however, then the criteria used to allocate funds must not ignore factors such as congestion, air quality and other considerations that ISTEA has sought to emphasize.

### **Status of Direct Allocation STP Funds**

The Durham Urban Area has argued that Congress specifically earmarked the Direct Allocation STP funds to be allocated by each TMA. The Durham MPO maintained that there were bicycle, pedestrian, and transit projects that should be funded from this Direct Allocation money. Although the state initially disagreed, they later admitted that the urban area did indeed have the right to allocate the funds as they saw fit. They had, however, taken the liberty of allocating these new funds to projects that had been previously programmed in the state TIP. They stated very clearly that there were no other funds available and if the urban area removed the Direct Allocation Funds those projects, which were slated to be funded with those monies, would be canceled. The Durham Urban Area refused to approve the 1993-1999 TIP until this issue was resolved. The issue was resolved when the State agreed to allow the Durham Urban Area to have complete control over \$2.2 million dollars in FY 1993 funds, and complete control over all Direct Allocation Funds, estimated annually to total approximately \$2.5 million, from FY 1997 forward.

### **STP Enhancement Funds**

The Durham Urban Area has been arguing for a number of years that the state must do more to fund bicycle and pedestrian projects in North Carolina. The passage of ISTEA and the creation of the Enhancement Program, which puts bicycle-pedestrian projects at the top of the urban area's list of eligible projects, led the urban area to anticipate an expansion of the Bicycle Program. In FY 1994, North Carolina received approximately \$13 million. The bicycle/pedestrian program will only receive \$2.2 million. Over \$4 million is being allocated to Historic Railroad Station Preservation and \$3.4

million to a "discretionary" program. The Durham Urban Area believes that the MPOs across the state should play a greater role in determining the suballocation of the Enhancement Program among various projects. The "discretionary" program, which is understood to be allocated at the discretion of Board of Transportation members, lacks the accountability that federal rules require.

### **State Pedestrian Policy**

ISTEA places greater emphasis on alternative modes of transportation, including pedestrian facilities. This inclusion of pedestrian considerations conflicted directly with a state prohibition of using transportation funds to construct new pedestrian facilities. While the Board of Transportation subsequently modified their policy with regard to pedestrian facilities, it is uncertain whether the new policy, which many local officials thought did not go far enough, will result in any substantial investment in pedestrian facilities. Funding for pedestrian projects, as reflected through the enhancement category of the state TIP, is not provided through FY 1995.

### **Future Directions**

The implementation of ISTEA, particularly in North Carolina, has been an evolutionary process. The promise of ISTEA has far exceeded the reality of the process. Adding to the natural confusion of changing the deeply ingrained system in North Carolina has been the ambiguity of the preliminary guidelines prepared by U.S. DOT to guide the transition. At a meeting with Federal Highway Administration representatives to resolve some of the outstanding issues between the Durham MPO and NCDOT, one U.S. DOT staff member labeled the project selection provision in ISTEA, under the NCDOT TIP process, "essentially meaningless".

The U.S. DOT released their final regulations in November, 1993. While the full impact of these final regulations will take some time to be determined, a quick review indicates that both sides in the debate will find support for their positions. Given the history of ISTEA to date, further clarification of the issues discussed above will be necessary.

Whatever the outcome, it is fair to say that ISTEA has changed forever the way transportation planning and funding is conducted in North Carolina. Whether the urban areas of the state take full advantage of the opportunities afforded by ISTEA will ultimately be decided by their willingness to take on, and possibly antagonize a very powerful state DOT. While the risks are many, the rewards are great.CP